IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.998 OF 2003
IN
WRIT PETITION NO. 1430 OF 2002

The Reserve Bank of India .. Appellant

Vs.

Vinayachandra Tulsidas Madhalani & Ors... Respondents

Mr.Virag Tulzapurkar, Senior Advocate, Kirti Munshi, Kunal Damle i/b. Udwadia & Udeshi for the Appellant.
Mr.R.M.Sawant, Government Pleader for Respondent Nos.8 to 10.

CORAM : DR.S.RADHAKRISHNAN & S.J.VAZIFDAR, JJ.

DATE : 26TH JULY,2006.

P.C.:

1. Heard the learned Counsel for the Appellant and the learned Government Pleader for the Respondent Nos.8 to 10. It appears that the other Respondents, though duly served, no one is present. Affidavit of service has been filed. This Appeal has been filed by the original Respondent No.4 Reserve Bank of India, challenging the order dated 9th July, 2002 passed by the Learned Single Judge, with regard to one of the directions.

2. It appears that the Original Petitioners, who alongwith certain other Directors of Respondent No.12 - Co-operative Bank had paid a sum of Rs.5.41 Crores

to a Broker to purchase various Government Securities. Finally, it was found by the Registrar of the Co-operative Societies that no Government Securities were at all purchased and handed over to the Bank. In view thereof, all the aforesaid members of the B oard of Directors were removed from the Board of Directors of the said Bank. Aggrieved thereby, those Petitioners being the Directors had filed the above Petition.

3. The Learned Single Judge, while allowing the Petition, had observed and passed the directions as under:-

> "It is not clear from the impugned order for what period the supersession or the removal of the board of directors would continue. Considering all the circumstances, I am of the opinion that though the action of the Reserve Bank and the Registrar is legal it cannot be said to be a proportionate action in the given circumstances, which are peculiar in the facts of this case which I have discussed hereinabove. Mere removal of the Board of Directors or mere supersession and mere appointment of the Administrator in the place of the Board of Directors would not protect the interest of the depositors. This act would certainly not bring back in the coffers of the bank the huge amount of Rs.5.41 Crores. The bank has already lost the said amount which obviously was of the depositors."
>
> "23. In order to safeguard the said amount it is necessary to take certain steps to secure the said amount and to bring the money back to the Respondent No.6 bank. According to me, the whole responsibility should be fixed on the Directors of the bank including the Petitioners, for their serious

lapse in transacting through only one broker without formulating any investment policy. In my opinion, if the Petitioners and the other Directors of the Board of the bank are directed to make good the entire loss caused to the bank by bringing the amount of Rs.5.41 Crores the depositors would be secured to that extent, and it would be in the interest of complete justice to the public and the depositors as is contemplated under section 110A of the Act. Mere removal of the Directors would not bring back the amount which is lost to the Home Trade by the Petitioners. The Petitioners and the other Directors of the bank must be made to realise that they owe serious responsibility to the depositors and they must follow the bank regulations with of seriousness and they cannot feign ignorance of the Reserve Bank directives. They cannot be heard to say that they are laymen and they are not expert in the banking industry. The bank has lost huge amount of Rs.5.41 Crores on account of their so called ignorance and carelessness and callousness which is apparent from the record of the case. I say so as I simply cannot imagine that anyone who has his senses would simply hand over a huge amount of Rs.5.41 Crores without getting the physical delivery of the Government securities in the return. It is a case of financing the broker for personal gains by jeopardising the Bank money and the depositors' interest. The bank Directors have done so and, therefore, I call them careless and callous. They must be made to realise their responsibility to the public and the depositors. They cannot escape their responsibility by getting away on account of removal from the Board of Directors of the bank."

"24. I, therefore, direct the Petitioners and the other Directors of the Respondent No.6-bank to jointly and severally or collectively bring back the entire amount of Rs.5.41 Crores within eight weeks from today. <u>As and when they bring back the said amount, the impugned order shall stand revoked.</u> In case, they fail to bring back the said amount, they should be disqualified permanently from contesting the elections for the Board of Directors not only of Respondent No.6 bank but of any other Co-operative banks or financial institutions. If they fail to act accordingly in making good the loss sustained by the bank, the impugned order

> passed by the Registrar under section 110A would stand confirmed."
>
> "25. To be precise, the Writ Petition would stand allowed if the Petitioners would deposit the amount of Rs.5.41 Crores with the Administrator of the Respondent Bank within eight weeks from today and the impugned Order would stand revoked and the Administrator shall stand discharged. And the Writ Petition shall stand dismissed without any further orders if the Petitioners and the Directors do not comply with this order. The impugned order shall continue to be in force and in operation until the amount of Rs.5.41 Crores is deposited with the Administrator of the Respondent Bank, the outer limit being eight weeks. Otherwise the impugned order shall remain in force and in operation in accordance with law."

4. The learned Senior Counsel Mr.Tulzapurkar appearing on behalf of the Appellant states that the Reserve Bank of India is aggrieved by the directions given by the Learned Single Judge in paragraph Nos.24 and 25. In the sense, that in the event all the aforesaid Petitioners - Directors were to bring back the amount of Rs.5.41 Crores, the impugned order should stand revoked. The learned Senior Counsel Mr.Tulzapurkar contends that as per the aforesaid directions, if the Directors were to bring back the amount, there is no question of revocation of the impugned order. The learned Senior Counsel submitted that this direction would put a seal of approval on embezzlement. Mr.Tulzapurkar, the learned Senior Counsel brought to our notice that even the Learned Single Judge has observed, if the Directors failed to bring the said amount they should be disqualified permanently from contesting the elections for the

Board of Directors not only of Respondent No.6 bank but of any other Co-operative banks or financial institutions. Therefore, Mr.Tulzapurkar, the learned Senior Counsel submitted that there is no question of

revocation, even if the Directors bring back the money.

5. In view of the aforesaid facts and circumstances of the case, we set aside the following portion of the order passed by the Learned Single Judge, wherein it is directed that "As and when they bring back the said amount, the impugned order shall stand revoked", in paragraph 24 of the impugned order.

6. Similarly, we also set aside the following direction in paragraph-25,

> "25. To be precise, the Writ Petition would stand allowed if the Petitioners would deposit the amount of Rs.5.41 Crores with the Administrator of the Respondent Bank within eight weeks from today and the impugned Order would stand revoked and the Administrator shall stand discharged".

7. Both the aforesaid directions in paragraph 24 and 25 of the impugned order, cannot be sustained in law at all.

8. In any event, the original Petitioners, being the Directors have not deposited any amount till date. Mr.Tulzapurkar, the learned Senior Counsel contended that the Bank Regulation Act, 1949 does not empower

the Reserve Bank of India to conduct any statutory audit on Co-operative Banks and as such, the aforesaid directions ought not to have been issued by the Learned Single Judge. Since the statute does not authorise the Reserve Bank of India to conduct statutory audit, such directions could not be issued.

9. Accordingly, we allow the Appeal, setting aside both the directions in paragraph 24 and 25, as mentioned hereinabove, with costs.

(DR.S.RADHAKRISHNAN,J.)

(S.J.VAZIFDAR,J.)